



South Florida Water Management District

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MEMORANDUM

To: Governing Board

From: Allen Vann, Inspector General

Date: October 7, 1997

Subject: Investigation of Minority/Woman Business Enterprise
Certification of Gulf Construction Group, Inc.

INTRODUCTION

The Office of Inspector General (the "Office") of the South Florida Water Management District (the "District") received a letter, dated September 23, 1997, from the Florida Legislature's Joint Legislative Committee on Everglades Oversight, requesting an investigation of the District's Minority and Woman Business Enterprise (M/WBE) certification of Gulf Construction Group, Inc. (Gulf). Holland & Knight (H&K), legal counsel for IT Corporation (IT) and the American Indian Movement of Florida (AIM) also requested that our office investigate this matter through their letters dated September 9, 1997 and September 11, 1997, respectively.

The Office started an investigation on September 15, 1997, into Gulf's certification. This report summarizes the results of our investigation of Gulf's M/WBE certification.

OBJECTIVES

The objectives of our investigation were:

- to determine whether Gulf was properly certified in accordance with District policies and guidelines governing the M/WBE program that were in effect at the time of Gulf's certifications, and
- to determine whether the documents that Gulf submitted in support of its application for M/WBE certification contained false statements and/or misrepresentations.

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METHODOLOGY

In addition to reviewing documentation provided by H&K and AIM, we visited the tribal headquarters of the Lower Muscogee Creek Tribe in Whigham, Georgia, to review tribal records and files relative to the applicant, Mr. George M. Hobbs. We also visited Mr. Hobbs at his place of business in Panama City, Florida, to review supporting documentation relative to his construction operation and tribal ancestry. We consulted with District counsel, with counsel from the Department of Labor and Employment Security (DOL), and with a professor of Anthropology at Florida State University. We also contacted the following:

- United States Small Business Administration
- United States Department of Interior, Bureau of Indian Affairs
- United States Department of Interior, Inspector General
- State of Florida Department of Labor and Employment Security
- State of Florida Department of Transportation
- State of Florida Division of Purchasing
- Governor's Council on Indian Affairs, Inc.
- Muscogee (Creek) Nation of Oklahoma
- Poarch Band of Creek Indians of Alabama
- American Indian Movement of Florida

We reviewed the relevant laws, regulations, rules, policies and guidelines that were in effect at the time of Gulf's certification. We reviewed Gulf's certification files at the District, and we interviewed employees of the District's Office of Supplier Diversity and Outreach (SDO) that were directly involved in Gulf's M/WBE certification.

BACKGROUND

On May 9, 1997, the District issued Request for Bid (RFB) No. C-ECP Construction of Stormwater Treatment Area(s) STA-1W and STA-2. The RFB permitted the District to select a combined or single project bid for the construction of STA-1W and STA-2. A total of six bids were submitted for both STA-1W and STA-2 and three bids were submitted for the combined project. IT's bid of \$42,577,669 was the lowest combined bid. However, IT's bid was deemed non-responsive for failure to demonstrate through documentation submitted with the bid that a good faith effort was made to meet the District's M/WBE participation goal of 16%.

On July 21, 1997, the District issued a Notice of Intent to award the contracts to Harry Pepper & Associates, low bidder for construction of STA-1W, and Bergeron Land Development, Inc. (Bergeron) the next lowest bidder to IT for

construction of STA-2. The two contractors combined bid of \$42,904,600 was \$326,931 higher than IT's bid. Both Harry Pepper & Associates and Bergeron met or exceeded the M/WBE participation goal.

Bergeron's sole M/WBE sub-contractor is Gulf, which was certified in the District's M/WBE program through its 51% owner, George M. Hobbs, based on his claim that he was a Native American Indian. Gulf's certification is valid for three years, expiring on March 27, 1999, however, it is subject to periodic review to verify continued eligibility.

On July 24, 1997, IT filed a notice of protest of the District's intent to deem IT's bid non-responsive and the determination that Harry Pepper & Associates and Bergeron submitted responsive bids. A Department of Administrative Hearing (DOAH) proceeding to determine whether IT provided the required good faith effort documentation to meet the RFB's M/WBE participation goal concluded on September 17, 1997. The administrative law judge has not ruled on this issue as of the date of this report. IT requested that the issue of alleged fraudulent misrepresentations in Gulf's M/WBE certification be included as part of the hearing, however, the administrative law judge denied this request.

On September 16, 1997, IT filed a Petition for Formal Proceeding, which raised a myriad of issues including allegations that Mr. Hobbs submitted documentation containing fraudulent misrepresentations with his M/WBE application.

SDO originally certified Gulf as a Native American minority business enterprise on January 25, 1994, for a one-year period expiring January 1995. Gulf was re-certified in the business of general construction on March 28, 1996, for a three-year period expiring March 27, 1999. Both the certification and re-certification were prior to September 25, 1996, the effective date of the District's M/WBE Contracting Rule.

SDO administers the District's M/WBE program, which includes the review of certification applications. Other responsibilities include M/WBE database development and maintenance, outreach and training, systems development and M/WBE expenditure tracking. During the period January 1994 through March 1996, the SDO had only two full time employees; a Director and a Business Operations Analyst. The SDO Director, hired in November 1989, possesses prior Minority Business Enterprise (MBE) program implementation experience. The Business Operations Analyst transferred to the SDO in December 1993 and had no relevant previous experience.

After approximately one or two months with SDO, the Analyst was assigned responsibility for performing M/WBE certification application reviews. The extent of the training provided during this two-month period consisted of Director instruction and interactions at bi-monthly meetings with local government employees administering their MBE programs. The Director stated that she was

comfortable with the Analyst's work and limited her own involvement in the certification review process to assisting with problem applications or applicants who were appealing a certification denial.

The certification process consists of a desk review of the application and supporting documentation. This review is performed by the Analyst. Site visits and applicant meetings are rarely conducted, but telephone conversations with applicants are common. For the period FY95 through FY97, the SDO performed the following certification application and re-certification reviews:

	FY95	FY96	FY97*	Total
Certifications	266	171	312	749
Re-certifications	434	231	151	816
Total	700	402	463	1565

Note: Information was provided by the SDO.

* FY97 information is through September 12, 1997.

Gulf's application for M/WBE certification, dated October 18, 1993, as a Native American Indian owned enterprise was SDO's second such application and the Analyst's first for this minority group. In fact, of the 1,565 applications reviewed by SDO, only five claimed Native American Indian status.

CRITERIA

The District's Procurement and Contracting Policy (the "Policy"), dated May 1, 1988, and the Minority Business Enterprise Certification Guidelines (the "Guidelines"), issued on May 24, 1991, govern M/WBE certification. The Guidelines specify criteria for determining M/WBE eligibility. Under Section H of the Policy, minority business enterprise and minority person are defined as follows:

Minority Business Enterprise	Any small business concern which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51 percent owned by minority persons and whose management and daily operations are controlled by such persons. A minority business enterprise may also primarily involve the practice of a profession.
Minority Person	means a lawful, permanent resident of Florida who is: <ul style="list-style-type: none">A. Black AmericanB. Hispanic AmericanC. Asian AmericanD. Native American IndianE. Native HawaiianF. American WomanG. Physically Disabled Person

Additionally, the Guidelines state that "Bona fide minority group membership may be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community."

Both the Policy and the Guidelines reference Section 288.702 and 288.703, F.S. (known as the Florida Small and Minority Business Assistance Act) which defines a Native American Indian as a "person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services."

The Department of Management Services (DMS) set forth a list of criteria and list of documentation necessary to establish one's ethnicity. The Florida Administrative Code Sections that were relevant to the DMS's administration of the State's MBE program are as follows:

Chapter 13A-2 Minority Business Enterprise is the part of the Florida Administrative Code used by the DMS at the time they were responsible for administering the program.¹

Section 13A-2.001(5)(d) defines Native American as “a person who has origins in any of the Indian Tribes prior to 1835.”

Section 13A-2.001(8) defines “origins” as “the minority owner’s racial or cultural and geographic derivations, as substantiated by at least one grandparent’s birth.”

Section 13A-2.001(16) defines a “federally recognized Indian Tribe” as a tribe recognized by the Secretary of the Interior.

According to a Senior DOL Attorney, neither the DOL nor DMS would recognize any tribe not recognized by the Department of Interior. The part of the rule that references Indian tribes prior to 1835 is interpreted to mean federally recognized tribes. The Florida Legislature, in 1986, adopted Senate Concurrent Resolution 657, recognizing the Florida Tribe of Eastern Creek Indians; however, an Attorney General opinion issued on May 6, 1988, stated that the resolution was merely an acknowledgement of the Creek’s presence in Florida and does not have the force of law or convey any special rights to them. It goes on to state that in order for the Creeks to avail themselves of certain privileges, they would have to be a federally recognized tribe. On this basis, the DOL will only certify Native American minorities proving their membership or eligibility for membership in a federally recognized tribe.

¹ At the State level, the responsibility for this program was transferred from the Department of Management Services to the Department of Labor & Employment Security (DOL). The rules were transferred from section 13A-2 to section 60A-2 of the Florida Administrative Code. Within DOL there exists a Commission on Minority Economic & Business Development/the Minority Business Advocacy & Assistance Office.

The list of salient documentation that is acceptable for consideration of minority status as a Native American is outlined in Section 13A-2.005. This list includes:

1. birth certificates,
2. death certificates,
3. membership or eligibility for membership in a federally recognized Indian tribe,
4. a letter issued by the Bureau (Department of Interior Bureau of Indian Affairs) which certifies eligibility to share in a distribution of judgement funds resulting from an aboriginal land claims settlement, i.e. docket number, and
5. tribal registration.

FINDINGS

M/WBE CERTIFICATION PROCESS

We compared the documents listed under Section 13A-2.005 to the documents provided by Gulf supporting its M/WBE certification as a Native American Indian enterprise. They are as follows:

- A letter, dated September 18, 1991, on Lower Creek Muscogee Tribe letterhead, signed by Charles R. Venable, Chief of the Lower Creek Muscogee Tribe and Peggy Venable, Certified Genealogist for the Department of the Interior. This letter attested to the legitimacy of the tribe and to Mr. Hobbs' ancestry as a member of the tribe.
- A letter, dated July 25, 1988, signed by C. Peggy Venable, Certified Genealogist, Enrollment Specialist, attesting to Mr. Hobbs membership in the Lower Creek Muskogee Tribe of Indians of the Holmes Valley Band.
- A letter, dated March 20, 1992, to the Associate Administrator Minority Small Business and Capital Ownership Development. This letter is on tribal letterhead and it goes into detail as to the origins of the tribe and states that Mr. Hobbs is a member of the tribe. This letter was signed by C. Peggy Venable, Tribal Chairperson 21 years, as well as various Chiefs, Clan Chiefs, and other tribal officials.
- An affidavit signed by Peggy Venable attesting that she is over 21 years of age; she has researched the rolls as far back as 1908 in tracing the ancestry of George Michael Hobbs and his family, and is a qualified genealogist and is certified by the Department of Interior to do research of this nature.

- A membership card indicating that George Michael Hobbs is a member in good standing of the Okcha Clan of the Eastern Bank – Lower Creek Muscogee Tribe, Inc.
- A membership card indicating that George Michael Hobbs is a member in good standing of the North Bay Clan of the Lower Creek Muscogee Tribe, Inc.
- A letter to George Michael Hobbs from the North Bay Clan of the Lower Creek Muscogee Tribe, Inc., dated October 9, 1992, notifying Mr. Hobbs that he has been admitted to membership in that organization.
- A decision from the Small Business Administration Office of Hearing and Appeals that overturned an earlier determination denying 8(a) entry eligibility to Gulf Construction Group, Inc.
- A letter dated April 8, 1993, from the U.S. Small Business Administration informing Mr. Hobbs that Gulf has been certified as a participant in the 8(a) program.
- A letter from the Florida Department of Transportation, dated September 24, 1993, informing Mr. Hobbs that Gulf Construction Group, Inc., has been certified as a Disadvantaged Business Enterprise (DBE) for one year.

Considerable weight was placed on Gulf's certification as a Disadvantaged Business Enterprise with the United States Small Business Administration and Florida's Department of Transportation in approving his application for certification with the District.

It is our opinion that the District's Office of Supplier Diversity and Outreach acted appropriately in certifying Gulf based on the seeming credibility of the voluminous amount of documentation provided by the applicant in support of his Native American status.

GULF'S MAJORITY OWNER UNABLE TO DEMONSTRATE NATIVE AMERICAN STATUS

The documentation included with the application in support of Mr. Hobbs' claim of Native American minority status could not be substantiated. Mr. Hobbs' and the Lower Creek Muscogee Tribe to which he belongs could not demonstrate that the tribe or Mr. Hobbs' origins meet the criteria of the program. The tribe had no support to substantiate that it was an Indian tribe prior to 1835. Both Mr. Hobbs and the tribe could not substantiate claims as to his ethnic origins as defined in the rules of the M/WBE program. In addition, the preponderance of documentation was provided by a tribal leader, Ms. C. Peggy Venable, who misrepresented her qualifications to perform genealogical work.

Indian Tribes prior to 1835

The Department of Interior, Bureau of Indian Affairs in 1981 issued a final determination that the Lower Muscogee Creek Tribe East of the Mississippi, Inc, does not exist as an Indian Tribe. In that determination, it was found that the tribe had an "unstable membership...; [a] lack of historical data for most geographic areas and for many time periods, and the concurrent lack of evidence of political continuity; the apparent recent institution of "clan" organizations; and a lack of historical connections or association between families..." The determination further states that the "LMC [Lower Muscogee Creek] is not a tribal community which has functioned as an autonomous entity throughout history until the present, but is rather a group of individuals who believe themselves to be of Indian ancestry, most of whom did not conclusively establish this fact. The members are scattered widely through the South and have had little or no association with the group as a whole until they were recruited by the leaders of the LMC group. No evidence could be found that a sense of tribalness or community exists."

Ms. Marion McCormick, Principal Chief of the Lower Creek Muscogee Creek Tribe, could provide us with no support that the tribe existed prior to 1835. The only relevant documentation that Ms. McCormick was able to provide was a copy of the Treaty with the Creeks dated 1790. Article one of the Treaty refers to the tribes of the Upper, Middle, and Lower Creeks. She could not link the present day tribe to the tribes referred to in the treaty.

We consulted with J. Anthony Paredes Ph.D. at the Department of Anthropology, at Florida State University in Tallahassee. Dr. Paredes has served as an expert witness for the State in matters relating to claims of Native American Indian minority status. He reiterated that the Lower Creek Muscogee tribe was denied recognition by the Department of Interior. According to Dr. Paredes, the only

recognized Creek tribe, with the exception of the Poarch Band of Creeks in Alabama², was composed of the descendants of the Treaty parties that were relocated in the West (the Muscogee (Creek) Nation of Oklahoma). Dr. Paredes stated that designations of Upper, Middle and Lower Creeks were primarily geographic divisions made by the U.S Government framers of the Treaty in an attempt to consolidate the Creek into one nation for the sake of expediency in negotiating with the various tribal leaders. These distinctions otherwise do not exist today.

Dr. Paredes asserted that the adoption of the name Lower Muskogee Creeks by the present day tribe in Georgia is a connection in name only. While they have a small percentage of members with provable descent from Native Americans, they are in no way a preexisting tribe that existed as a community in the same manner as federally recognized tribes.

In a related matter, we learned that in April 1996 the State Commission on Minority Economic & Business Development, which administers the State's M/WBE program, denied John R. Tolbert, a Lower Muskogee Creek Tribe member, his application for MBE certification of his company, Environmental Safe Air, located in Panama City. His Notice of Denial Letter states: "Though he is a card-carrying member of the Lower Muskogee Creek Tribe, it remains unproven either that this tribe was in existence prior to 1835 or that Mr. Tolbert's origins in the tribe resulted from his descendency from at least one Native American parent or grandparent, as required by the rule."

We also found that on January 15, 1996, Mr. Hobbs applied for state MBE certification for Gulf. The file reflects that Hobbs applied for State MBE certification by using his membership card in the Eastern Band of the Lower Creek Muskogee Tribe, Inc. On February 12, 1996, the State Certification Officer sent Mr. Hobbs a letter asking for additional information. Mr. Hobbs sent in additional information, but it wasn't enough. The State Certification Manager followed up with a letter to Mr. Hobbs dated March 20, 1996, indicating that his application for certification was denied because the information provided did not establish his eligibility under Chapter 287 and 288 of the Florida Statutes and Commission regulations, Chapters 60A-2.006(2), Florida Administrative Code. The response was deemed incomplete. We further discussed this with the Certification Application Reviewer who stated that she had not considered Mr. Hobbs' ethnicity and wouldn't have done so until all of the required documentation was submitted; however, on his application, Mr. Hobbs identified himself as being a white male. The Certification Application Reviewer did state that the criteria that she uses for determining Native American Indian status is membership in a federally recognized tribe.

It should be noted, that we had previously asked Mr. Hobbs whether he had ever applied for State MBE Certification and he was less than candid in his response.

² A pre-removal offshoot of the original Creek Nation.

Mr. Hobbs was also less than forthcoming in his response to questions as to whether he had applied to any other tribe. In fact, we were informed by the Muscogee (Creek) Nation of Oklahoma (a federally recognized tribe) that he did apply for membership but was denied because his ancestry could not be traced to the rolls governing tribal membership.

“Origins”- Minority Owner’s Racial Derivations, As Substantiated By At Least One Grandparent’s Birth

The files maintained by both the tribe and Mr. Hobbs were prepared by Ms. C. Peggy Venable, a tribal leader, who represented herself to be a certified genealogist for the Department of Interior in documents submitted by Gulf in support of its M/WBE application. Her resume also stated that she was a certified genealogist. We found that the Department of Interior or Bureau of Indian Affairs does not certify individuals as genealogists. In fact, we could not find any official professional designations available for this discipline.

Numerous attempts to contact Ms. Venable were unsuccessful. We were told that she was recuperating from surgery and could not meet with us. Neither Ms. McCormick nor Mr. Hobbs could account for or substantiate her credentials. The day we visited the tribe we were again told that she was ill and could not meet with us. Later Ms. McCormick conceded that Ms. Venable, while not feeling well, was doing a TV interview in Alabama on behalf of the tribe.

Both the tribal file and Mr. Hobbs' files were incomplete and inconclusive and thus did not substantiate Ms. Venable's attestations as to his Native American ancestry. Copies of tribal rolls were provided that had names of individuals that were the same as people on the family tree Ms. Venable prepared for Mr. Hobbs, but they could not be tied to census documents or birth and death records. The records were generally incomplete and inconclusive, resulting in questionable matches of individuals contained in various documents.

Another indication of Native American Status that may be provided is a letter issued by the Bureau (Department of Interior Bureau of Indian Affairs) which certifies eligibility to share in a distribution of judgment funds resulting from an aboriginal land claims settlement, i.e. docket number. However neither Mr. Hobbs nor his family were among the approximate seven thousand Creek descendants in the Eastern United States that participated in or received payment under “Indian Claims Commission Docket Number 21.”³

³ The Bureau of Indian Affairs, in their 1981 determination, stated that payment under Indian Claims Commission Docket Number 21 does not constitute recognition of the group as a tribe.

Moreover, there wasn't a single document identifying any of Mr. Hobbs parents or grandparents as Native Americans.

Based on the above, we have concluded that the documents provided by Mr. Hobbs in support of his M/WBE certification with the District can not be relied on.

Recommendation:

The District should review the evidence presented in this report and any additional documentation that Gulf Construction Group, Inc. may wish to provide and take any appropriate measures that may be available under FAC Section 40E-7.664 - *Suspension, Debarment, Revocation or Decertification*.

c: Florida Legislature's Joint Legislative Committee on Everglades Oversight
American Indian Movement of Florida
Holland & Knight